



Office of the Assistant Attorney General

Washington, D.C. 20035

June 4, 1993

Virginia Daugherty, Esq.
Daugherty and Associates
P. O. Box 15507
Amarillo, Texas 79105

Dear Ms. Daugherty:

This refers to the 1991 redistricting plan for the county commission, the additional polling place and the renumbering and realignment of voting precincts for McCulloch County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our March 12, 1993, request for additional information on April 5, 1993.

We have considered carefully the information you have provided as well as comments from other interested parties. The Hispanic share of the county's total population increased from 19.1 percent in 1980 to 26.4 percent in 1990; approximately 80 percent of the county's Hispanic population resides in the City of Brady. The commissioners court consists of four members elected from single-member districts and one member elected at large. The existing redistricting plan, which has been in use since 1968, divides the City of Brady and the Hispanic population in the city among the districts such that Hispanics comprise no more than 41 percent of the total population and 36 percent of the voting age population in any district, according to the 1990 Census.

Despite the significant increase in the percentage of Hispanic residents in the county since 1980 and despite the concentration of Hispanic residents in the City of Brady, the proposed plan maintains the division of Brady among the four districts, effectively dispersing most of the county's Hispanic residents among the districts. The result is that Hispanic residents comprise 42 percent of the total population and 36 percent of the voting age population in the most-heavily Hispanic district under the proposed plan.

The information available to us suggests that the commissioners court gave only perfunctory consideration to an alternative redistricting proposal that eliminated the fragmentation of the Hispanic community within Brady and provided for one district in which approximately 60 percent of the total population and 54 percent of the voting age population was Hispanic. While the county is not required by Section 5 to adopt any particular plan, it is not free to adopt a plan that perpetuates the unnecessary fragmentation of Hispanic population concentrations. In the context of an apparent pattern of racially polarized voting that has defeated candidates preferred by Hispanic voters or discouraged such candidacies under the existing redistricting plan, it appears that the proposed plan will continue to deny Hispanic voters an opportunity to elect candidates of their choice to the commissioners court.

The explanations provided in your submission for the continued division of the Hispanic community in Brady appear largely to be post hoc justifications for maintaining the status quo and thereby protecting the interests of the incumbent commissioners. We recognize that the protection of incumbents may not in and of itself be an inappropriate consideration, but it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 commissioner court redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

With respect to the proposed additional polling place and renumbering and realignment of precincts, the Attorney General will make no determination at this time since these changes are directly related to the objected-to change. 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action McCulloch County plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Since the Section 5 status of the proposed redistricting plan has been placed at issue in Mireles v. McCulloch County, No. A-92 CA-577 SS (W.D. Tex.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Sam Sparks
United States District Judge

Counsel of Record